

# Delaware Professional Licensing Review Committee

August 23, 2016

9:30 a.m.

DHSS/Herman Holloway Campus Main Administration Building  
Room 198, New Castle, DE

## MEETING MINUTES

Approved 9/28/16

**Committee Members Present:** Secretary of State Jeffrey Bullock, Chair; Deanna Killen on behalf of Senator Gerald Hocker; Debbie Gottschalk and Jay Lynch on behalf of Secretary Rita Landgraf, Delaware Department of Health and Social Services; Charles Madden, Executive Director of the Wilmington HOPE Commission; Nello Paoli, Jr., licensed electrician; Senator Karen Peterson; Secretary Patrice Gilliam-Johnson, Delaware Department of Labor; Alan Grinstead, on behalf of Commissioner Robert Coupe, Delaware Department of Corrections

**Staff Present:** David Mangler, Director, Division of Professional Regulation; Patricia Davis, Deputy Attorney General, Department of Justice; Meaghan Jerman, Director's Assistant, Division of Professional Regulation

**Public Present:** Carmine Balascio, DAPE, Meghan Lester, Cheryl Heiks, Brian Sweeney

### Call to Order

Secretary Bullock called the meeting of the Delaware Professional Licensing Review Committee to order at 9:34 a.m.

### Review and Approval of Meeting Minutes

The Committee reviewed the minutes of the June 16, 2016 meeting. Senator Peterson made a motion, seconded by Mr. Paoli, to approve the minutes as written. By unanimous vote, the motion carried.

### Review and Discussion of Lists of "Crimes Related" and Conviction Language Currently in Statute

Mr. Mangler reminded the committee that the list of substantially related crimes from all Title 24 boards and commissions was sent electronically to committee members earlier in the summer. The committee was provided with a handout that summarized the most frequent crimes requiring a waiver by those boards most commonly utilizing the waiver process. He noted that the most frequent crimes vary from profession to profession. The Board of Cosmetology and Barbering's crimes are frequently burglary, robbery, and drug related crimes. This Board is currently reviewing their list of substantially related crimes list to determine if it may be shortened. The Plumbing and Electrical Boards' most frequent crimes requiring waivers are assault and burglary related. These boards are not currently

interested in removing any crimes from the list of those considered substantially related. The Board of Massage and Bodywork's crimes that frequently require a waiver include theft, drug charges, and prostitution. The Board is currently considering removing all of the drug related charges on their crimes list. The Board of Mental Health and Chemical Dependency Professionals' most frequent crimes requiring a waiver are primarily drug related. The Board is currently only proposing to eliminate unlawful delivery of a non-controlled substance from their list. The Board of Nursing's most frequent crimes requiring a waiver include theft, criminal mischief, purchasing alcohol as a minor and offensive touching. They are considering eliminating misdemeanor theft, criminal mischief, all alcohol related crimes, and offensive touching. The Real Estate Commission's most frequent crimes requiring a waiver include theft, criminal mischief, and felony shoplifting. The Commission is considering eliminating the felony shoplifting, criminal mischief, and the misdemeanor charges. Senator Peterson questioned if there are other crimes being considered for elimination from each of the boards' lists of substantially related crimes. Mr. Mangler confirmed that those summarized are the crimes most frequently seen by a board and therefore will have the greatest impact if changes are made, but all are currently being reviewed. Mr. Mangler added another item that would have a positive impact for plumbers, electricians, cosmetology, and barbering is reducing the waiting time for felony convictions for licensure eligibility, as well as also allowing the board to look at individuals for waivers who are on level 1 and/or level 2 probation. Mr. Mangler provided a handout with the current statutory language regarding waivers which state the applicant cannot be on probation at the time of licensure. Mr. Mangler shared he was considering approaching the General Assembly in January to ask if there is an interest in reducing the waiting time for felony convictions for the trades.

Ms. Davis shared that as the respective boards are reviewing their lists of crimes, the Deputy Attorney Generals (DAGs) are being very heavy handed in suggesting elimination of many misdemeanors. Ms. Davis explained what often happens when reviewing the criminal background checks is there are more significant charges that are then plead down to misdemeanor charges and the misdemeanor charge is all the Board may consider. Senator Peterson provided a historical explanation as to why many of the misdemeanor charges are included within the list of substantially related crimes sharing that after the absolute bar on felony convictions was lifted there was a lot of pushback where many felt the misdemeanor charges were also substantially related to the profession. Secretary Bullock stated that in some instances misdemeanor charges are appropriate, citing the massage profession and prostitution charges as an example, but explained this needs to be the exception and not the rule.

Mr. Mangler explained another challenge concerning waivers experienced by boards are those individuals who only have one conviction that occurred over twenty years ago. Currently all convictions require board review and a waiver, regardless of the time of the conviction. Mr. Mangler suggested giving consideration to placing a cap on the look back time of a conviction, and not require those convictions that occurred after a certain amount of time to obtain a waiver for licensure. This would significantly expedite the application process in these situations. Secretary Bullock inquired how

many waivers are required monthly. Mr. Mangler cited the Board of Nursing, for example, averages six or more applications monthly requiring board review and a waiver. Mr. Mangler shared that he will be meeting with the warden at Howard Young Correctional Facility to discuss the creation of a barbering program within the facility. They are looking at training barbers, who currently will not be eligible for licensure once they are released from incarceration. Senator Peterson questioned the language in the electrical statute that 5 years have passed since the time of conviction to be eligible for a license. She explained in some instances an individual may have been convicted 5 years ago and been incarcerated during that entire time. She expressed concern as this would then allow someone just released from prison immediately eligible for a waiver for licensure. Senator Peterson explained she did not believe you should be released from jail and then immediately back on the job the next day and suggested a period of time be established from the time of release before being eligible for licensure.

Mr. Mangler summarized the additional recommendations the committee had identified which included viewing misdemeanor offenses as the exception and not the rule, and a suggested cap on the look back period on an applicant's criminal history. Mr. Grinstead suggested that by placing a cap on the look back period there is potential to overlook other felony charges as the individual may have been incarcerated since the time of the charge. Secretary Bullock reiterated Senator Peterson's point suggesting a period of time be established after the individual is released from prison before they are eligible for licensure. Mr. Grinstead agreed with this suggestion but cautioned to be careful on the language relating to this. Mr. Madden inquired if the committee would be specific about the types of criminal convictions that would require a period of time to pass before being eligible for a license, or if it would be across the board for all convictions regardless of the nature of the crime. Senator Peterson clarified it should vary based on the crime. Mr. Mangler shared that some of the draft language on an electrical bill that was worked on during the last legislative session distinguished a length of time between person related and non-person related crimes before someone would be eligible for licensure. Mr. Mangler cautioned, however, as there are also crimes that are non-person related yet still related to a profession, citing arson as a correlation to an electrical license. This generalization would not always apply.

### **Review and Discussion of Results of Equivalent Requirements of Surrounding States**

Mr. Mangler provided a handout of Delaware's licensing requirements for various professions compared to the surrounding states of Maryland, New Jersey, and Pennsylvania. He noted that the professions licensed, as well as requirements for licensure, vary from state to state. The most interesting of the professions he explained was cosmetology and barbering. The states all license the profession; however the education requirements vary from state to state. Mr. Mangler explained a recommendation to potentially not license a profession such as barbering would create a hindrance to barbers attempting to obtain a barbering license in another jurisdiction. He explained that in Pennsylvania cosmetology applicants can take the written theory exam required for licensure after they have completed a portion of their training and then they obtain their license once obtaining their

certificate of completion from the educational program. This concept appears to potentially expedite the licensure process for cosmetologists in Pennsylvania. In Maryland and Pennsylvania certain professions, such as electrical and plumbing, are licensed by the individual jurisdictions. Mr. Mangler shared that there was recently an agreement reached to begin looking at standardizing licensure requirements for social work in the region. He offered an example of the need for standardization when a social worker from Maine had significant challenges obtaining a Delaware license despite being licensed in Maine for many years and Maine requiring more clinical hours than Delaware to obtain an initial license. He hopes Delaware can begin looking at requirements in states like Maine to establish a less burdensome application process for those individuals applying for licensure here. Mr. Mangler suggested another recommendation the committee consider is to encourage the boards to begin looking at licensure requirements in surrounding states and come up with recommendations to ensure an appropriate process is in place as needed to obtain a license in Delaware.

### **Review of Comparison of Board Size to Active Licensee Population**

Mr. Mangler distributed a handout comparing the size of the specific board with the number of licensees in that profession or trade. He noted that there does not appear to be a correlation regarding board size and the number of licensees. Ms. Davis offered her opinion that a 9 member board is the ideal board size. She further explained more than 9 board members makes it challenging to obtain a quorum. Ms. Davis confirmed that quorum is defined by statute. Secretary Bullock noted that in many instances a quorum could be obtained by only the professional members on a board. Mr. Mangler shared the Delaware Board of Nursing has the most public members than any other states' Board of Nursing. He added that while he was reviewing other states requirements he discovered many state boards are comprised of 90% professional members and only a few public members.

Mr. Mangler confirmed as legislation was recently passed, the number of board seats were being reduced on the Board of Cosmetology and the Board of Mental Health and Chemical Dependency Professionals. Senator Peterson inquired if the committee should look at also making a recommendation regarding the board size and compositions. Secretary Bullock explained he did not believe this was a generalized recommendation that the committee could make as all boards are not are created equally, but agreed the committee could suggest as a good rule that nine is a good board size.

Mr. Mangler suggested another consideration the committee could contemplate is the meeting frequency of some of the boards that do not frequently have much business to discuss. Currently the statute requires a minimum number of meetings a year for all boards. In some cases the boards are meeting only to approve the previous meeting's minutes and because they are required to do so by statute. Mr. Mangler explained if the language was changed requiring the boards to meet at least annually (and as needed) it could help keep costs down as the licensees pay the administrative costs of meetings through the fees established by the Division. Currently most boards have granted authority

for DPR to administratively review and issue licenses to those applicants with clean applications. A less frequent board meeting would not impede timeframes for licensure.

Ms. Davis explained the Division's Investigative Unit and the complaint process once a complaint is received by the Division. The Investigators work with a Board member as needed for professional guidance in the specialty. The complaint/investigation may then be forwarded to the Attorney General's office for possible prosecution. If the case is prosecuted it is then brought before the entire Board to determine the recommended discipline. Ms. Davis also explained the emergency suspension process in the event that a licensee is deemed to be an imminent threat to public safety. In these instances, Secretary Bullock, along with the Board President, have the authority to temporarily emergency suspend an individual's license pending an expedited hearing.

Senator Peterson inquired if the Boards received payment for meetings. Mr. Mangler confirmed the Board members are paid per meetings and he reiterated that decreasing meeting frequency for less active boards would save money for licensees as the board member pay is generated from license fees. Mr. Mangler reminded the committee the Division does not receive any general funds. Mr. Mangler explained the board pay language is in statute and there was recent discussion on increasing the pay from \$50 a meeting to \$100 a meeting. There is cleanup language for the respective boards that will be introduced in the next legislative session.

Secretary Bullock summarized the committee's next steps and suggested the recommendations identified be put into writing so the committee is prepared to meet the October deadline. Secretary Bullock requested staff provide the committee with draft recommendations for review at the September. This will not preclude any new suggestions the committee members may have.

Mr. Mangler explained that many boards who grant waivers are frequently doing so for the same crimes and questioned if these crimes should remain on the list. Ms. Gottshalk suggested the crime could remain on the list, but could be waived administratively if established requirements were met. Mr. Mangler explained that currently there is a packet of information regarding the conviction submitted by the applicant that is taken to the board for review. The board does not necessarily have to see the applicant to grant the waiver, but nonetheless this process still slows down the time before a license may be issued significantly. Senator Peterson suggested an administrative process be established to expedite the process for those applicants requiring a waiver for certain crimes and professions.

Ms. Davis provided a summary of her recommendation regarding the North Carolina Dental case as it applies to Delaware's licensing boards. Ms. Davis reminded the committee that the decision received from the Supreme Court on the North Carolina case surprised many as it treated the board as private actors whose sovereign immunity applies to only if certain criteria are met. This criteria included the

agency must be acting pursuant to an expressed policy or purpose and there must be significant state supervision. The current structure, Ms. Davis explained, is most likely not going to meet the test for significant state supervision. Most of the Title 24 Boards are under DPR and are subject to the Administrative Procedure Act, FOIA, and there is DAG representation at every meeting. Ms. Davis explained the majority of attorney general opinions that have been issued on the North Carolina matter have suggested states consider doing something more substantial. Ms. Davis provided the committee with a legal memo for the committee to review and consider for the next meeting. The memo outlines the North Carolina Dental case and her recommendations to ensure that Delaware's licensing boards are viewed as sovereignly immune with regard to anticompetitive trade practices. One of her suggestions is consideration be given to add language to empower DPR in 29 *Del. C.* §8735 to modify or reject any anticompetitive action on behalf of the boards. California and Oklahoma have taken similar action and would include any regulations that attempt to modify or clarify what scope of practice entails and also any decision regarding unlicensed practice. Ms. Davis also noted the unique situation concerning the Delaware Association of Professional Engineers. They are a licensing board who operate in many of the same manners as other boards, but are not under DPR's umbrella. It should be considered to offer them protection. The committee will review the document and discuss it in conjunction with the draft final recommendation that will be submitted to the Governor at the next meeting.

### **Public Comment**

Jennifer August addressed the Committee to encourage the board to revisit the objectives of Executive Order 60. She shared, in her view, the task before the committee is to review every profession licensed by the boards, see how they may be streamlined and how new professions may be added, such as her profession of clinical art therapy. She appealed to the committee to make a recommendation that if a profession has a national certifying exam the profession be recommended for licensure.

Mr. Brian Sweeney addressed the Committee. He read aloud an excerpt from the Board of Medical Licensure and Discipline's February 2016 meeting minutes where he addressed the Board concerning licensure requirements for post graduate medical education. Mr. Sweeney is seeking legislation to introduce an Assistant Medical Doctor license. He explained this innovative approach has been taken in other states and would provide licensure for residents who have passed both the USMLE1 and 2. Mr. Sweeney shared his challenges finding a residency program as well as finding support for this legislation. Mr. Sweeney shared he has reviewed Executive Order 60 and expressed concern that the committee is perhaps "missing the gist" of the Executive Order as he does not see boundaries being reduced based on the discussion.

Carmen Balascio from the Delaware Association of Professional Engineers (DAPE) addressed the committee and explained he was attending due to discussion of the North Carolina dental case and

wanted to answer any questions pertaining to DAPE. He stated they can plan to attend the committee's next meeting.

**Next Meeting Date**

The Committee agreed to hold their next meeting in September in Sussex County. Ms. Jerman will follow up with Committee members with the next meeting date and location.

**Adjournment**

With no further discussion, the Committee adjourned at 10:51 a.m.